

The SUPERB Advisory Committee Annual Report March 2006

Purpose

This report is submitted to the General Assembly and the Department of Health and Environmental Control (DHEC) in order to fulfill the requirements of Title 44, Chapter 2 of the 1976 South Carolina Code of Laws, as amended. Specifically, Section 44-2-150(G) of the State Underground Petroleum Environmental Response Bank (SUPERB) Act requires the SUPERB Advisory Committee to submit an annual report that addresses the financial status and viability of the SUPERB Account and the SUPERB Financial Responsibility Fund (SFRF), the number of sites successfully remediated, the number of sites remaining to be remediated, and any statutory or regulatory changes the Committee recommends. In addition, this report contains information regarding the current status of the underground storage tank (UST) population in South Carolina.

The SUPERB Accounts

Federal regulations (enacted in 1988) require UST owners or operators to demonstrate financial responsibility for corrective action and third party liability at \$1,000,000 per leak occurrence. The South Carolina General Assembly created the SUPERB Account in 1988 to assist UST owners and operators in meeting the corrective action portion of the federal financial responsibility requirements, and the SFRF was legislatively created in 1993 to assist owners and operators in meeting the third party liability requirement. UST owners and operators are responsible for a \$25,000 deductible per UST leak occurrence and they remain liable for costs above \$1,000,000.

A ½ cent environmental impact fee imposed on each gallon of petroleum entering the state funds the SUPERB Accounts. The Department of Revenue collects the fee under the authority of Section 12-28-2355.

SUPERB Account information as of December 31, 2005:

Total Revenue in Calendar Year 2005	\$ 17,800,537.65
Balance brought forward to 2005	\$ 17,936,059.53
Commitments as of December 31, 2005	\$ 18,430,718.36
Available for Commitment as of December 31, 2005	\$ 639,719.64
Total Expenditures in Calendar Year 2005	\$ 16,666,159.18
Cumulative Spent Since 1988	\$207,408,404.00

Long Term

The leak rate from active, non-operational and orphan tanks was 1.09% for 2005. This leak rate has

been consistent (at or near 1%) over the past three years. In 2004, Milliman USA, Inc., an actuary firm, projected that a continued leak rate of 1% would result in the SUPERB Accounts having a deficit of \$56,261,000 by the end of 2010 and a deficit of \$189,783,000 by the end of 2026. The SUPERB Accounts are scheduled to sunset in 2026.

SUPERB Financial Responsibility Fund

DHEC is currently aware of 13 third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. As of December 31, 2005 the SFRF Balance was \$2,644,063.40. A total of \$921,287.42 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. In 2005 \$1,573.06 in legal fees was expended managing third party cases. No claims were paid.

Financial Responsibility For the State Fund Deductible

The SUPERB Act requires that UST owners and operators demonstrate financial responsibility for \$25,000 on a per occurrence basis as the SUPERB Accounts provide the remaining required coverage. Allowable options include: self insurance, commercial insurance, insurance pool (risk retention group), guarantee, surety bond, letter of credit, trust fund, standby trust fund, and several local government options. The UST database reveals that sixty-seven percent (67%) of UST facilities are covered by self-insurance, fourteen percent (14%) by letters of credit or surety bonds, twelve percent (12%) by commercial insurance, and the remainder by guarantees, trust funds, and local government options.

Cleanup Program Progress

As of December 31, 2005, DHEC has confirmed a total of 8,744 UST releases. Of these, 5,344, or 61%, have been closed. A total of 266 releases were closed in calendar year 2005, 109 without SUPERB funding, and 157 with SUPERB funds. Sixteen releases requiring engineered cleanup systems were closed after cleanup actions were completed. Cleanups requiring engineered systems, often referred to as active cleanups, can take more than five years to complete.

At year's end, there were 3400 open releases, of which 3,261 are eligible to receive SUPERB funds. Confirmed releases are ranked by DHEC according to the risk each poses. The priority system is outlined in the SUPERB Fund Access Regulations (R.61-98). Appendix 1 depicts the total number of SUPERB eligible releases by their risk category as of December 31, 2005. Appendix 2 depicts this number by county. Appendix 3 depicts the number of cases where rehabilitation activity is being funded and the number where no funding is provided by risk category.

As of December 31, 2005, 342 releases were in active cleanup, 250 releases were being monitored as part of a formalized natural attenuation remedial plan, and 1,014 releases were actively being funded by the SUPERB fund. For the most part, site rehabilitation activities are funded by SUPERB or by the UST owner under the \$25,000 SUPERB deductible.

DHEC continues to report their desire to hasten the cleanup of over 300 releases in the highest two risk categories requiring engineered remediation systems by securing additional revenue. They estimate the cost to cleanup those releases may exceed \$40 million; however, by intensifying the cleanup rate, DHEC anticipates long term cost savings as contamination is not allowed to spread and receptors do not have to be repaired or replaced.

Underground Storage Tank Information

Since 1986, there have been 43,710 petroleum USTs registered with DHEC. Of those, 31,602 have been removed from the ground or properly closed in place. As of December 31, 2005, there were 12,108 operating USTs at 4,221 locations across the state.

Owners and operators must maintain corrosion, spill, and overfill equipment to prevent releases and perform daily release detection activities to monitor their UST systems. Over the past several years owners and operators of UST systems have invested a significant amount of capital in upgrading equipment and maintaining compliance. This investment along with a rigorous inspection program has paid off in the form of fewer releases and higher compliance rates. This effort has improved the overall financial position of the SUBERB fund, however, as noted above, liabilities still significantly exceed assets.

The US Environmental Protection Agency requires DHEC to routinely report on UST compliance with release prevention and release detection, commonly referred to as substantial operational compliance. DHEC reported that 27 percent of the approximately 4,200 UST facilities inspected during 2005 were not in substantial operational compliance, an improvement over the 2004 rate of 32 percent. The Committee applauds the compliance inspection and outreach innovations as well as the robust enforcement policy that led to this improvement and anticipates continued emphasis in the coming year.

Legislative Recommendations

The SUPERB Advisory Committee continues to support efforts that DHEC may undertake to secure additional funding to expedite the cleanup of high priority releases.

In fiscal years 2003 and 2004 interest from the SUPERB Accounts were transferred to the General Fund to offset cash deficits for the State's budget. For fiscal year 2003 under General Proviso 72.97, \$941,340 of interest was taken from the SUPERB Account (Sub-Fund 4984) and \$154,266 was taken from SUPERB Financial Responsibility Fund (Sub-Fund 4906). Proviso 73.2 of the fiscal year 2004 Appropriations Bill, required \$468,008 interest be taken from the SUPERB Account and \$76,208 be taken from the SUPERB Financial Responsibility Fund. For FY 2004, the Governor vetoed the redirection of the \$468,008 of interest from the SUPERB Account, but that veto did not address the redirection of \$76,208 in interest from the SUPERB Financial Responsibility Fund. The \$154,266 and the \$76,208 are slated to be repaid during FY 06 from the Enforced Collections included under Proviso 73.17. The SAC would like to see all

redirected funds repaid to the SUBERB Account.

The Energy Policy Act signed by President Bush in August 2005 has several new requirements that will impact petroleum UST owners and operators in the near future. One such requirement allows EPA, should SUPERB be determined insolvent, to disapprove SUPERB as an accepted financial responsibility mechanism. Should this occur, tank owners would be required to obtain insurance to cover the \$1 million dollar financial responsibility requirement of RCRA Subtitle I. Also, the new Act allows EPA to cut Federal funding if state legislatures divert state tank funds for other uses. It is anticipated that statutory and regulatory changes will be introduced for the 2007 legislative session in order to address these and other issues raised by the Energy Policy Act.